

EXHIBIT 5

CONFIDENTIALITY AGREEMENT

Effective Date: _____, 2016

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”), is entered into by and between ELLIPTIC WORKS LLC (“the developers”), and _____, (“Recipient”), as of the date set forth above (the “Effective Date”).

WHEREAS, in connection with a potential business transaction between the developers and the Recipient (the “Potential Transaction”), the developers is willing to disclose certain confidential information to Recipient, and Recipient is willing and agrees to receive such information on a confidential basis in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the developers and Recipient hereby agree to be legally bound as follows:

1. **Definition of Information.** “Information” means all proprietary information furnished by the developers or its representatives, counsel, employees, agents, any directors and/or officers of an entity the developers may form(collectively, the “Representatives”) to Recipient, whether disclosed or provided before or after the Effective Date and whether disclosed or provided in oral, written, graphic, electronic, photographic, tangible or any other form (such as by permitting examination of tangible items or viewing of premises), and which may include, but is not limited to, technical data, trade secrets, know-how, intellectual property or other materials owned or controlled by the developers, including, but not limited to, research, product plans, products, samples, specifications, service plans, services, customer lists, customers, markets, software, developments, inventions, processes, formulas, chemical applications, laboratory instruments, laboratory methods of analysis, interpretation of lab results, techniques, technology, equipment, manufacturing methods, designs, drawings, engineering, marketing, distribution and sales methods and systems, sales and profit figures, finances and other business information, and all analyses, compilations, studies or other materials prepared by Recipient containing or based in whole or in part upon such information furnished to Recipient by the developers or its Representatives.
2. **Obligations of Confidentiality and Non-Use.** Recipient shall use the Information solely to determine whether it desires to enter into the Potential Transaction and shall not use any

Information to circumvent the developers or its clients or use the Information for its own benefit. Recipient shall not reverse engineer, reverse compile or otherwise attempt to derive the composition or underlying information, structure or ideas of any Information. Recipient shall hold the Information in strict confidence and shall not disclose any Information to any person or entity, provided, that Information may be disclosed to those Representatives of Recipient who (a) have a need to know the Information in connection with the Potential Transaction, (b) have been informed by Recipient of the confidential nature of the Information and of the confidentiality undertakings of Recipient contained herein and (c) agree in writing to be bound by the terms and provisions of this Agreement. Recipient shall be responsible for any breach of this Agreement by its Representatives. Recipient shall ensure that unauthorized persons do not gain access to any Information. Recipient shall promptly notify the developers of any unauthorized release of, access to or use of Information. In the event Recipient or its Representatives release, provide access to or use Information without the developers' authorization, Recipient hereby assigns, transfers, and conveys to the developers, or its designees, all of Recipient's worldwide right, title, and interest in and to any and all inventions, discoveries, developments, concepts, improvements, trade secrets, techniques, processes and know-how, whether or not patentable, which Recipient may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, which results, to any extent, from access or use of Information. For clarity, such notice or assignment shall not remedy any breach of this Agreement resulting from such unauthorized release, access or use.

3. **Limitations on Obligations.**

3.1 This Agreement imposes no obligation upon Recipient with respect to Information that Recipient can demonstrate through written documentation:

- (a) was in Recipient's possession before receipt from the developers, and Recipient so informs the developers in a timely manner;
- (b) is or becomes available to the public through no fault, act or omission of Recipient;
- (c) is received in good faith by Recipient from a third party who is not subject to an obligation of confidentiality owed to the developers; or

(d) to have been independently developed (as demonstrated by contemporaneous written evidence maintained in the ordinary course of business of the Recipient) without access to or use of such Information.

3.2 In the event that Recipient is required by judicial or administrative process to disclose Information, Recipient shall promptly notify the developers and allow the developers a reasonable time to oppose such process or to seek limitations on the portion of the Information that is required to be disclosed.

4. **Title; No License; Return.** Unless otherwise specified in writing, all documents and materials containing or embodying Information shall remain the property of the developers, and Recipient agrees not to make any copies of the Information without the prior consent of the developers. Recipient understands that this Agreement does not grant Recipient a license in or to any of the Information. Upon the request of the developers or if either party determines that it does not wish to proceed with the Potential Transaction, Recipient shall promptly return or, in the case of electronic files, destroy all Information and all copies, extracts and other objects or items in which it may be contained or embodied, and shall cause an authorized representative of Recipient to certify in writing to the developers as to such return or destruction.

5. **No Obligation or Warranty.** Recipient understands that this Agreement does not obligate the developers to disclose any information or negotiate or enter into any agreement or relationship, including, but not limited to, the Potential Transaction. the developers makes no express or implied warranties or representations of any nature regarding any Information provided hereunder. the developers shall have no liability to Recipient or its Representatives relating to or arising from the use of the Information.

6. **Term of Agreement.** This Agreement shall remain in effect with respect to any particular item of Information until Recipient can document that it falls into one of the exceptions stated in Section 3.1.

7. **Assignment; No Third Party Beneficiaries.** the developers may assign this Agreement without the prior written consent of Recipient. Recipient hereby acknowledges and agrees that the duties and responsibilities of Recipient hereunder are of a personal nature and, therefore, neither this Agreement nor any right or obligation hereunder shall be assignable or delegable in whole or in

part by Recipient. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer on any person or entity, other than the parties hereto or their respective successors and permitted assigns, any benefits, rights or remedies.

8. **Governing Law, Jurisdiction and Attorney's Fees.** This Agreement shall be governed by and interpreted in accordance with laws of the State of New York without giving effect to any conflict of laws provisions. Recipient agrees that any dispute or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement may be brought in the United States District Court for the Eastern District of New York, or if such court does not accept jurisdiction or will not accept jurisdiction, in any court of general jurisdiction in the State of New York. The prevailing party in any dispute or legal action regarding the subject matter of this Agreement shall be entitled to recover attorney's fees and costs.

9. **Equitable Relief.** Recipient acknowledges and agrees that due to the unique nature of the Information, any breach of this agreement may cause irreparable harm to the developers for which damages are not an adequate remedy, and, accordingly, the developers shall be entitled to seek equitable relief in addition to all other remedies available at law. Recipient further agrees that no bond or other security shall be required in obtaining any equitable relief and Recipient hereby consents to the issuance of an injunction and to the ordering of specific performance.

10. **Entire Agreement; Amendment and Waiver.** This Agreement is the sole agreement between Recipient and the developers with respect to the subject matter hereof and it supersedes all prior agreements and understandings with respect thereto, whether oral or written. No amendment, supplement or other modification to any provision of this Agreement shall be binding unless in writing and signed by both Recipient and the developers. No waiver of any rights under this Agreement shall be effective unless in writing signed by the party to be charged. A waiver of a breach or violation of any provision of this Agreement shall not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement.

11. **Severability.** If any provision of this Agreement or application thereof to anyone or under any circumstances is adjudicated to be invalid or unenforceable in any jurisdiction, such invalidity

or unenforceability shall not affect any other provision or application of this Agreement which can be given effect without the invalid or unenforceable provision or application and shall not invalidate or render unenforceable such provision or application in any other jurisdiction.

12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement as of the Effective Date.

ELLIPTIC WORKS LLC

ADDRESS

Authorized Signature

Name:

Date:

, Recipient

Authorized Signature

Name:

This Agreement is to be executed in duplicate.
Please return one fully executed copy to the developers at the address above.

Signature Page to Confidentiality Agreement